

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 26**

THE HERTZ CORPORATION

Employer
and

Case 26-RC-8252

**TEAMSTERS LOCAL 327, AFFILIATED
WITH INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, AFL-CIO-CLC**

Petitioner

DECISION AND ORDER

Upon a petition duly filed under Section 9(b) of the National Labor Relations Act, as amended, herein referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding,¹ the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Hertz Corporation (herein "Employer" or "Hertz") is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.²
3. Teamsters Local 327, affiliated with International Brotherhood of Teamsters, AFL-CIO-CLC (herein "Petitioner" or "Union") is a labor

organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.

4. No question affecting commerce exists concerning the representation of petitioned-for employees of the Employer within the meaning of Section 9(c)(1) of the Act.³

ORDER

IT IS HEREBY ORDERED that the petition filed herein be, and it hereby is, dismissed.

RIGHT TO REQUEST REVIEW

Under the provision of Section 102.67 of the Board's Rules and Regulations, a Request for Review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. This request must be received by the Board in Washington by **June 8, 2001**.

DATED May 25, 2001, at Memphis, TN.

/S/ Ronald K. Hooks

Ronald K. Hooks, Regional Director
Region 26, National Labor Relations Board
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1. The Employer and Petitioner have each filed briefs which have been duly considered.

2. The parties stipulated that the Employer, a Delaware corporation, is engaged in the rental and sale of motor vehicles at its location at 800 Hangar Lane, Nashville, Tennessee. During the last 12 months, a representative time period, the Employer has had gross revenues from such rentals valued in excess of \$500,000. Also, during the last 12 months, a representative time period, the Employer purchased goods and materials valued in excess of \$50,000 from vendors located outside the State of Tennessee, such goods and materials being directly shipped to the Employer's Tennessee location.

3. The Petitioner seeks a unit of all "security representatives" employed by the Employer at its Nashville, Tennessee facility, the only facility at issue herein. The following 12 employees are included in this classification: Ron Nichols, Walter Nicholson, Murry King, Emory Bowen, Felix Plummer, James Reed, David Hopkins, Alvin Hill, Hanoa Nasser, Said Bihi, Muna Elmi and Joe Dentici. The petitioned-for employees were referred to as "security personnel," "security representatives" and/or "security guards" at varying times during the pre-election hearing and in various documents submitted by the Employer. The employees in this job classification will be referred to as "security representatives" in this Decision. The Employer, contrary to the Petitioner, contends that its security representatives are guards within the meaning of the Act and that the Petitioner is prohibited by Section 9(b)(3) of the Act from representing them because it also represents and admits to membership employees other than guards. The Petitioner does not dispute the fact that it represents and admits employees other than guards to membership. Rather, the Petitioner takes the position that none of the petitioned-for employees are guards within the meaning of the Act.

Including the disputed security representatives, there are approximately 150 employees at the Nashville facility. The record reveals that the Petitioner currently represents approximately 75 of the Employer's employees, including customer service representatives (who prepare rental agreements and are referred to as "CSRs" herein), vehicle service attendants ("VSAs"), mechanics

(who maintain and repair the Employer's fleet of vehicles) and utility men. The Petitioner does not represent approximately 75 shuttle drivers.

The parties stipulated, and I find, that Station Manager Ron Wallace, front-line supervisor for security representatives and VSAs, is a supervisor within the meaning of Section 2(11) of the Act inasmuch as he disciplines employees and/or effectively recommends discipline of employees. City Manager Kelly Graham is in charge of the Employer's operation in Nashville and has the final authority as to all terminations at this location.

The Employer rents approximately 700 vehicles each day primarily to passengers arriving in the city of Nashville by airplane. Additionally, there are approximately 600 vehicles that are returned each day. The Employer's inventory of approximately 2,000 vehicles is valued at approximately \$40 million and earns an estimated revenue of \$25-30 million each year. The facility is open daily from 5:30 AM until midnight. Vehicles may be returned to the facility at any time, but can only be picked up during the Employer's regular business hours.

The Employer maintains four separate car-holding locations at its Nashville facility including the **administrative office, quick turn facility, "Eagle" lot** and **rental return facility** at the airport. The Employer's vehicles are fueled, washed and maintained at its **administrative office** located about 1-½ miles from the main office at 800 Hanger Lane. The entrance/exit to the lot is equipped with a security booth, "tiger teeth" and "arms". "Tiger teeth" are described as a security device that punctures tires on vehicles that are not authorized by the Employer's security representatives to enter/exit the lot; "tiger teeth" remain raised at all times except when they are lowered by a security representative in order to allow authorized vehicles to pass through safely. "Arms" are described as a gate with automatic swinging arms that are raised in order to allow a vehicle to enter or exit. According to Graham, the security booths, "tiger teeth" and "arms" were installed in November 2000 at the administrative office and the rental return facility so they could leave ignition keys inside the vehicles as an accommodation to their customers. The automatic "arms" and "tiger teeth" are activated when a security representative presses a button located in the security booth. In addition

to the foregoing security measures, cameras are stationed at all gates to record cars as they enter/exit the lots. Additionally, bollards (concrete barriers) were erected around the perimeter of the lots to prevent cars from bypassing the gates and unlawfully exiting the lot.

Before the security booths (with their “tiger teeth” and “arms”) became fully operational in February 2001, security representatives patrolled the perimeter of “the area to make sure unauthorized individuals would not be taking cars off of our property.” Since then, Security Representative Ron Nichols testified that he scans vehicles as they arrive at the exit in order to “keep track of the cars”, requests the customer’s drivers license, checks the rental agreement to make sure it matches the customer’s name and license, checks the vehicle unit number, asks if there is a full tank of gas in the vehicle and if the mileage is correct and, finally, asks the customer if they need help with directions. Security representatives also scan the badge of shuttle drivers and vehicle unit numbers so that vehicles do not become misplaced or stolen. In those instances that the customer’s rental agreement fails to match the vehicle number, security representatives contact management and instruct the customer to return to the counter. If any of the documentation fails to match (whether it be the rental agreement, vehicle unit number and/or license number), security representatives do not allow the vehicle to leave the lot and contact management by radio.

The **quick turn facility**, “**Eagle**” lot and **rental return facility** are located about 1 mile from the administrative office. The **quick turn facility** is shared with three other car rental companies. The rental companies each have their own fueling and washing facilities at this location. There is a manager located at the quick turn lot “most of the time”; depending on the volume of cars, a security representative may also be posted at this location. The area is not equipped with any other security devices. Vehicles are held at this facility for service and “turned around” for rental at the airport. Directly across from the quick turn facility is the **Eagle lot** which serves as an overflow lot. Security representatives are posted to patrol the Eagle lot on those occasions that unlocked vehicles with keys are parked at that location.

The **rental return facility** (also known as the “gold club” area) is an unfenced lot that is equipped with a security booth with “tiger teeth” and “arms” at the back exit; at the front “customer” exits, there are two guard booths with “tiger teeth” and “arms”. City Manager Graham described the Employer’s “full gold” program wherein a customer’s rental agreement (which is prepared prior to the customer’s arrival) and keys are already located in the vehicle when the customer arrives at the Employer’s facility at the airport. After locating the stall number for their rental on the board, the customer proceeds to the exit area where the vehicle is scanned and the customer’s documents are checked by security representatives.

Jerry Smith (Employer’s Corporate Security Manager for the Southeastern Region) testified that security representatives are employed at the four locations, including Nashville, with the largest car theft problem in the region. The record reveals that 30 vehicles have been stolen from the Nashville facility since July 2000. Security representatives have been employed in-house at the Nashville facility since 1999; before that, the Employer hired various security guard companies to provide security services. According to Smith, security representatives were given additional customer relations responsibilities when they were brought in-house. Smith’s testimony in this regard is challenged by Security Representative Ron Nichols, the Petitioner’s only witness at the pre-election hearing. Nichols testified that he had more authority, not less, when he was employed by Wackenhut, one of the Employer’s contracted security services. For example, Nichols testified that he is now required to contact Wallace or the manager on duty to report unauthorized vehicles in the garage whereas, during his employment with Wackenhut, he had authority to take the tag number, call the police and have the vehicle removed. Thus, even though Nichols acknowledges that he has an obligation to keep unauthorized vehicles and drivers from entering/exiting the lot, he denies that he is a guard in the “true sense of the word” because his authority and duties were diminished when he started working for the Employer.

Security representatives are neither bonded nor deputized; they are not authorized to detain individuals (either customers or co-workers) even if such

individuals are engaged in misconduct. Rather, depending on the severity of the situation, they are instructed to notify a manager or call the police. All employees, including security representatives, retain the right to protect themselves. Security representatives are equipped with a radio – outfitted with a “security band” accessible only by security representatives and managers - and a scanner; they are not armed with firearms, mace or night sticks. With respect to the disputed employees’ security duties, Graham testified, “We’ve gone over with them their responsibilities on stopping car thefts, how to patrol, what to look for. We’ve had the police department out there on several occasions patrolling the area, telling – interacting with the guards out there, telling them what to look for. So no, they’re – they protect our assets, and they’re the last line of defense actually that we have.” Graham testified that the “only thing that stops [someone from getting in a car and driving off the lot] is the security guards.” Moreover, contrary to other employees, security representatives are authorized to issue tickets to employees who are observed speeding. Wallace is given the top portion of the “speeding” ticket and issues disciplinary action against the employee as needed. Although security representatives are not permitted to physically touch another employee, they are instructed to tell shuttle drivers to exit a vehicle if they are not appropriately attired with their shuttle vest and identification. Among other things, the record reveals that security representatives (including Ron Nichols) have also notified Wallace of unidentified persons or vehicles in the garage. Security representatives are the only employees with authority to raise the automatic “arms” and “tiger teeth”. Nichols acknowledges that security representatives should “be able to protect [employees]” and secure the Employer’s vehicles from theft. Nichols further testified that he would attempt to stop intruders from leaving the premises with stolen vehicles because the Employer was “paying” him to “protect their property”.

While there is no schedule for patrolling any of the locations at the Nashville facility, Graham testified that security representatives are required to patrol the “whole entire time they’re there”. At the “gold club” area, Graham testified that

security representatives leave the booth in order to patrol the garage area. According to Station Manager Wallace, security representatives are required to patrol when their other duties permit such. For those parts of the facility without security booths, Manager Graham testified that security representatives “patrol the area in order to prevent unauthorized individuals from getting into our cars and taking them”. Contrary to the testimony of Graham and Wallace, Security Representative Ron Nichols testified that he does not patrol the lots. Nichols, who is usually stationed at the back gate of the rental return facility, testified that he “stay[s] by my back gate” where he scans vehicles and operates the “arms” and the “tiger teeth”. According to Nichols, “You can’t get away from the booth; because you’ve got traffic coming constantly, you can’t leave it. There’s no way you can leave it.” The record reveals that two employees have been terminated for leaving their post at a security booth. On those occasions that Nichols has been stationed at one of the other lots, he sat in a vehicle by the front entrance where he scanned vehicles as they left the lot. Even while stationed at a security booth, Nichols admits that he engages in “fixed” patrolling wherein he uses his eyes and ears to scan the area “for anything that looks suspicious”.

All employees are provided with a copy of the Employer’s rules and regulations. The last page of the handbook provides safety rule policies and procedures for “Hertz Security Guards” which states, *inter alia*, that they will obey and enforce all company rules and regulations, protect company assets and notify management immediately concerning any injury, regardless of severity. In this regard, among other things, Manager Graham testified that security representatives are instructed to investigate and notify Manager Wallace of any irregularities at the facility. Moreover, the record reveals that security representatives, contrary to other employees, are expected to notify management if they observe other employees engaged in misconduct.

The Employer received a letter from the State of Tennessee Department of Commerce and Insurance (herein “TDOC”) on March 12, 2001 informing the Employer that it was allegedly operating a “proprietary security organization without proper licensure” and that it must “CEASE and DESIST” its illegal activity

until it had acquired the proper license. In response, Manager Smith contacted a TDOC agent who questioned him with respect to the duties of the Employer's security representatives. Based on the description given, Smith was informed that the Employer's security representatives were considered "security guards" by the TDOC and must be registered. In order to obtain licensing by the state, "security guards" are required to provide three fingerprint cards, photographs and proof of insurance; undergo a background check; and certify that they have completed a training program. On April 3, 2001 (prior to filing of the petition in this matter), the Employer filed paperwork to register all of its security representatives as licensed security guards in accordance with state law. At the same time, the Employer changed its hiring policy for security representatives to require applicants to possess state certification as a licensed security guard prior to hire.

Wallace testified that the uniform for security representatives "separates itself from the uniforms that other employees wear" and is "designed to look official". Contrary to the white and/or gray uniform with gold printing worn by other employees, security representatives wear a light blue uniform with a dark patch (about 1-½" by 1-½" in dimension) on the chest displaying a gold star and the words "Hertz" and "security" printed in gold. The uniform also includes an identification tag that includes their position ("Hertz Security Representative") and name. Security representatives wear ties, while other employees (except for male CSRs) do not wear ties. Security representatives also wear dark blue baseball hats with a dark blue badge similar to the one on their uniform. Manager Graham testified that security representatives wear a distinctive blue uniform because people "assume that they're looking at somebody with some sort of authority for that particular area."

Hiring procedures are the same for all employees with the exception that security representatives are now required to be licensed by the state as described above. All employees receive the same vacation benefits. Contrary to other employees, security representatives attend security meetings; security representatives do not attend other employee meetings. All employees are

subject to a company-wide progressive discipline system. Security representatives are paid hourly and are eligible for overtime as are all non-supervisory employees. All employees receive a ½ hour lunch break and two 15 minute breaks. “Counter” employees eat lunch in the break room behind the counter and mechanics use a break room by the mechanic bay. Contrary to other employees, security representatives eat lunch at their post because they are not authorized to leave the booth unless they have been relieved by another security representative or a manager. Nichols provided anecdotal evidence that while Wallace was off-duty or otherwise absent from work he has been relieved for a bathroom break by one of the shuttle drivers.

Security representatives received 5-6 hours of training in December 2000 in a class held by Managers Wallace and Jerry Smith. According to Wallace, “We went over how they would handle specific incidents, that is a customer, fighting, how they would handle that, what to do in case of fires, bomb threat, --”. All attendees (both new hires and long-time security representatives alike) were given a manual titled “Hertz Exit Gate Security Representative – New Hire Course” (herein “manual”). According to Security Representative Ron Nichols, he was one of only three security representatives who attended the formal training class in December. In that the instructors did not review the approximately 1-½” thick manual in its entirety, security representatives were told to take the manual home and read it. The security representatives were instructed in the following areas: identify general and specific duties (i.e., know physical layout of the facilities; know company rules and procedures, prevent crime and report infractions and incidents such as employee theft, drug and alcohol abuse and white collar crime); identify general security principles (i.e., maintain an orderly and secure environment, protect company employees, customers and property, and maintain a professional appearance and attitude); identify the local penal code and Hertz company policy regarding arrest/custody and physical force; identify responsibilities in emergency situations; identify communication methods and request for information procedures; identify physical barriers, forms of identification and physical threats; identify ethics and conduct

related to security operations; identify exit gate forms and lots; and be able to write clear, concise incident reports. A copy of an incident report included in the training manual reveals that security representatives are instructed to include, *inter alia*, the following on the report: date, time, name(s) of persons involved, details (who, what, where, when, how), action taken, comments, security representative's signature, supervisor's signature and shift hours. According to the manual, the incident report is designed to provide "more detailed information about an event than was originally documented in the location incident log book". Security Representative Ron Nichols testified, however, that he has never been provided with an incident report and, after receiving a suspension early in the year, purchased a notepad in order to record the particulars of any incident that may occur on his shift.

In the event of a strike, the manual instructs security representatives to inform management of any picket line activity and to maintain order at the exit gate. In this regard, the manual states, "Maintaining order at your post is of utmost importance. The Exit Gate Security Representative is a very visible symbol of the company and may draw comments from the crowd. You must remain neutral, neither encouraging or discouraging the participants." Moreover, a memo dated April 11, 2001 was distributed to the four facilities in the Southeast Region employing security representatives. The memo describes the general responsibilities of the Employer's security representatives and, in relevant part, requires security representatives "to assist in safeguarding of corporate assets and to document non-compliance of company policy and procedures." Security Representative Ron Nichols denies receiving a copy of the memo until early May. Until reading the memo, Nichols testified that he was not aware that security representatives were required to report observations of loitering or violations of company policy or procedure. In addition to the formal training described above, Manager Graham testified that informal training is ongoing and occurs on a weekly basis.

Section 9(b)(3) defines a "guard" as "any individual employed . . . to enforce against employees and other persons rules to protect property of the employer or

to protect the safety of persons on the employer's premises. . . .” The Board has determined that employees are guards within the meaning of the Act if they are charged with guard responsibilities that are not a minor or incidental part of their overall responsibilities. **Rhode Island Hospital**, 313 NLRB 343, 346 (1993) (the controlling factor in determining “guard” status is the nature of the duties of the guards and not the percentage of time which they spend in such duties). Guard responsibilities include those typically associated with traditional police and plant security functions, such as the enforcement of rules directed at other employees; the possession of authority to compel compliance with those rules; training in security procedures; weapons training and possession; participation in security rounds or patrol; the monitor and control of access to the employer's premises; and wearing guard-type uniforms or displaying other indicia of guard status. **Wolverine Dispatch, Inc.**, 321 NLRB 796, 798-99 (1996); **55 Liberty Owners Corp.**, 318 NLRB 308, 310 (1995); **Burns International Security Services**, 300 NLRB 298, 300 (1990). In applying its statutory mandate, the Board has held that watchmen who make plant rounds, punch clocks, enforce company rules and prevent unauthorized individuals from entering plant property are “guards” as defined by the Act. **Jakel Motors**, 288 NLRB 730, 742-43 (1988). Moreover, employees who spend 10 to 90 percent of their time engaged in guard duties at a watchman and janitorial service company, notwithstanding that they also perform general maintenance work when not performing guard duty, are “guards” as they are responsible for the safety of the building and its contents and are required to report to the police any threat to customers' property. **Watchmanitors**, 128 NLRB 903 (1960).

In **Wackenhut Corporation**, 196 NLRB 278 (1972), the Board held that security toll operators at the express highways in Puerto Rico were statutory guards. The operators' functions included, among other things, classifying vehicles approaching the barrier in order to determine the amount of toll to be paid; making change for drivers when necessary; keeping records relating to the collection and accounting of tolls and vehicles processed; and cleaning and policing the toll booth and immediate area. In that case, the Board found that the

employees in question possessed and exercised “responsibility to observe and report infractions,” which was an “essential step in the procedure for enforcement of the highway rules.” Thus, the Board concluded that the toll operators were employed “as guards to enforce against persons seeking to use the expressway rules to protect property and the safety of persons on the expressway premises.”

Ibid.

The Board has determined that the role a disputed employee may play during a period of industrial unrest or strike by other members of an employer’s work force was a particular concern to the drafters of Section 9(b)(3). **Burns**, supra. In this regard, the Board examines whether the disputed employees engage in guard responsibilities that are not a minor or incidental part of their overall responsibilities. **Boeing Company**, 328 NLRB No. 25 (1999); **Rhode Island Hospital**, supra.

In the case at hand, it is clear that the disputed security representatives are engaged directly and substantially in the protection of the Employer’s property. They prevent theft of the Employer’s property by refusing to allow unauthorized vehicles to enter/exit the Employer’s premises. Notwithstanding Nichols’ testimony that he was not previously aware that security representatives were required to report loitering or violations of company policy, Nichols admittedly received training and a security manual last year which instructs security representatives regarding such responsibilities. Moreover, in the event of a strike, security representatives are charged with informing management of picket line activity and maintaining order at the exit gates. As shown above, the possession of such a responsibility establishes the existence of guard status. **Wackenhut Corporation**, supra. The record also reveals that security representatives receive training in security procedures not provided to other employees and engage in patrolling - including “fixed” patrolling as described by Ron Nichols. Additionally, the Employer’s security representative wear distinctive uniforms of the kind usually reserved for security personnel and are held out to the public as security guards. Based on these factors, the record herein

establishes that the disputed security representatives possess traditional “guard” responsibilities.

The Petitioner requests that I take administrative notice of the Decision in **The Hertz Corporation, Rent A Car Division**, 20-UC-307 where the Regional Director found that Hertz’ exit gate attendants were not statutory guards. Even though I am not required to give precedential authority to the cited case, I would note that the case is distinguishable on its facts inasmuch as the Regional Director specifically noted that the exit gate attendants had no responsibility with respect to the enforcement of rules against its employees. Further, the overall facts of this case support the finding herein and do not support the position of the Petitioner.

Having concluded that the petitioned-for security representatives are statutory guards, and as the record establishes that the Petitioner admits to membership non-guard employees, I shall dismiss the Petition herein.

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